

## **FISCAL NOTE**

### **HB 2644 – SB 2823**

February 5, 2008

**SUMMARY OF BILL:** Reclassifies certain sexual offenses committed against a child between 13 and 16 years of age as rape of a child, a Class A felony. These offenses currently are classified as statutory rape (Class E felony), aggravated statutory rape (Class D felony), or mitigated statutory rape (Class E felony). Increases the maximum age of a victim, from less than 13 to less than 16 years of age, for the offenses of aggravated sexual battery, aggravated statutory rape, soliciting sexual exploitation of a minor, and rape of a child. Enhances the penalty from a Class E to a Class C felony for the offense of soliciting sexual exploitation of a minor who is less than 16 years of age. Increases the age of a victim, from at least 15 to at least 16 years, for the offense of mitigated statutory rape. Requires a life without parole sentence for the offenses of being a child sexual predator, child rape or aggravated rape of a child if at least one of the offenses occurred on or after July 1, 2008. Requires \$30,000 minimum bail for defendant charged with a sexual offense if the victim is less than 16 years of age.

### **ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures - \$31,352,700/Incarceration\***

**Increase Local Expenditures – Not Significant**

Assumptions:

- An average of 76 admissions to the Department of Correction (DOC) for sexual battery offenses in each of the past five years. DOC estimates 20 percent (15) of those victims were between the ages of 13 and 16. Fifteen offenders will be convicted of aggravated sexual battery involving a victim less than 16 years of age, and will serve an additional 6.5 years (an increase from 0.3 years for a Class E felony offense of sexual battery to 6.8 years for a Class B felony offense of aggravated sexual battery) as a result of this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has averaged 1.09 percent per year for the past ten years. Population growth will result in two additional offenders in the tenth year as a result of this bill. According to DOC, the average operating cost per inmate per day for calendar year 2008 is \$62.78.

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 17 offenders. The cost per inmate at 0.3 years is \$6,879.43 ( $\$62.78 \times 109.58$  days). The cost per inmate at 6.8 years is \$155,926.69 ( $\$62.78 \times 2,483.70$  days). The additional cost of increasing the average sentence length from 0.3 years to 6.8 years is \$149,047.26 ( $\$155,926.69 - \$6,879.43$ ). The total additional cost for 17 offenders is \$2,533,803.42 ( $\$149,047.26 \times 17$ ).
- An average of 119 admissions to DOC for statutory rape offenses in each of the past five years. DOC estimates 40 percent (48) of those victims were between the ages of 13 and 16, and 80 percent (38) of those would be Class E felony offenses and the remaining 20 percent (10) would be Class D felony offenses under existing law. Under this bill, these offenses would be elevated to the Class A felony of rape of a child and would serve 25 years at 100 percent.
- Thirty-eight offenders will be convicted of rape of a child who previously would have been convicted of mitigated statutory rape or statutory rape. Population growth of 1.09 percent per year will result in four additional offenders serving an additional 24.7 years (an increase from 0.3 years for a Class E felony to 25.0 years for a Class A felony offense). The maximum cost is based on 42 offenders in the tenth year. The cost per inmate at 0.3 years is \$6,879.43 ( $\$62.78 \times 109.58$  days). The cost per inmate at 25.0 years is \$573,259.88 ( $\$62.78 \times 9,131.25$  days). The cost per inmate in the tenth year is \$236,183.38 ( $\$62.78 \times 3,762.08$  days). The additional cost of increasing the average sentence length from 0.3 years to 25.0 years is \$229,303.95 ( $\$236,183.38 - \$6,879.43$ ). The total additional operating cost for 42 offenders in the tenth year is \$9,630,765.90 ( $\$229,303.95 \times 42$ ).
- Ten offenders will be convicted of rape of a child who previously would have been convicted of aggravated statutory rape. Population growth of 1.09 percent per year will result in one additional offender serving an additional 24.4 years (an increase from 0.6 years for a Class D felony to 25.0 years for a Class A felony offense). The maximum cost is based on 11 offenders in the tenth year. The cost per inmate at 0.6 years is \$13,758.24 ( $\$62.78 \times 219.15$  days). The cost per inmate at 25.0 years is \$573,259.86 ( $\$62.78 \times 9,131.25$  days). The cost per inmate in the tenth year is \$243,062.19 ( $\$62.78 \times 3,871.65$  days). The additional cost of increasing the average sentence length from 0.6 years to 25.0 years is \$229,303.95 ( $\$243,062.19 - \$13,758.24$ ). The total additional operating cost for 11 offenders in the tenth year is \$2,522,343.45 ( $\$229,303.95 \times 11$ ).
- One offender per year will be convicted of a Class E felony of sexual exploitation of a minor by electronic means and will serve 2.55 years (85 percent of three years) as a result of this bill. The cost per inmate at 2.55 years is \$58,472.66 ( $\$62.78 \times 931.39$  days).

- One offender will receive a Class C felony for sexual exploitation of a minor, 16 years of age or less, by electronic means and will serve an additional 2.25 years (an increase from 0.3 years to 2.55 years) as a result of this bill. The cost per inmate at 0.3 years is \$6,879.43 (\$62.78 x 109.58 days). The cost per inmate at 2.55 years is \$58,472.66 (\$62.78 x 931.39 days). The additional cost of increasing the average sentence length from 0.3 years to 2.55 years is \$51,593.23 (\$58,472.66 - \$6,879.43).
- During FY07, there were 57 offenders admitted for Class B predatory offenses, 131 offenders admitted for Class C predatory offenses, and 46 offenders admitted for Class A child rape offenses. DOC estimates that 10 percent (6) of the Class B predatory offenders would have prior convictions and would serve life without parole rather than the current eight-year sentence as a result of this bill. Population growth of 1.09 percent per year will result in one additional offender in the tenth year. The maximum cost in the tenth year is based on seven offenders serving additional time on their sentences. The cost per inmate at 8.0 years is \$183,443.16 (\$62.78 x 2,922 days). The cost per inmate in the tenth year is \$412,747.11 (\$62.78 x 6,574.50 days). The additional cost of increasing the average sentence length from 8.0 years to life without parole is \$229,303.95 (\$229,303.95 - \$183,443.16). The total additional cost for seven offenders is \$1,605,127.65 (\$229,303.95 x 7).
- DOC estimates that 10 percent (13) of the Class C predatory offenders would have prior convictions and would serve life without parole rather than the current three-year sentence as a result of this bill. Population growth of 1.09 percent per year will result in one additional offender in the tenth year. The maximum cost in the tenth year is based on 14 offenders serving additional time on their sentences. The cost per inmate at 3.0 years is \$68,791.19 (\$62.78 x 1095.75 days). The cost per inmate in the tenth year is \$298,095.14 (\$62.78 x 4,748.25 days). The additional cost of increasing the average sentence length from 3.0 years to life without parole is \$229,303.95 (\$298,095.14 - \$68,791.19). The total additional cost for 14 offenders is \$3,210,255.30 (\$229,303.95 x 14).
- Forty-six offenders would serve life without parole sentences for child rape offenses rather than the current 25-year sentence as a result of this bill. Population growth of 1.09 percent per year will result in five additional offenders in the tenth year. The maximum cost in the tenth year is based on 51 offenders serving additional time on their sentences. The cost per inmate at 25.0 years is \$573,259.88 (\$62.78 x 9,131.25 days). The cost per inmate in the tenth year is \$229,303.95 (\$62.78 x 3,652.50 days). The total additional cost for 51 offenders is \$11,694,501.45 (\$229,303.95 x 51).
- One additional person every five years will be convicted of aggravated child rape with 50 years time served. The maximum cost in the tenth

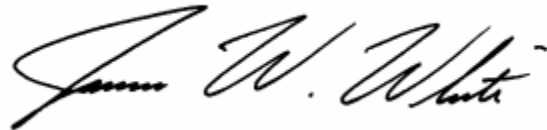
year is \$229,303.95 (62.78 x 3,652.50 days). The annualized time served per conviction is 730.50 days (0.20 annual number of convictions x 3,652.25 days). The annualized cost per conviction is \$45,860.79 (\$62.78 x 730.50 annualized days).

- In the absence of relevant data, it is assumed that bonds for sexual offenses against minors other than statutory rape are currently set above \$30,000 in most cases. The number of prosecuted statutory rape cases is relatively low. Of the cases in which the amount of bond will be increased under this bill, the number of offenders who would have been released on bond under the lower amount will not be significantly greater than the number released under the higher amount. There will be no significant increase in costs to local governments for additional jail time for persons who are unable to post bond.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

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